Supreme Court, U.S.
FILED

172

No. 10-451 JUL 9 - 2010

OFFICE OF THE CLERK

Supreme Court of the United States

Robert M. Ross,
Petitioner
V

UNITED STATES OF AMERICA,
California State Bar Association
Orange County Bar Association
Phillip Kohn, Laguna Beach City Attorney
Kenneth Frank, Laguna Beach City Manager
Marilyn Mirano, attorney
Miguel Mirano, attorney
James R. Gorman, attorney
Eleanor Palk, Orange County Police Commissioner
Chriss Street, Orange County Tax Assessor
Tony Rackauckas, Orange County District Attorney
Chris Norby, Orange County Board of Supervisors
Respondents

On Petition For Writ Of Certiorari

Ninth Cir. No. SACV08-01006 DOC (RNBx)
R.I.C.O. 18 USC 1962(c)
Ninth Cir. App No. 08-57003 FERNANDEZ, GOULD and M. SMITH

PETITION FOR WRIT OF CERTIORARI

Robert M. Ross, pro per
21552 Tree Top Lane
Laguna Beach, CA 92651
(949) 376-7371

QUESTIONS FOR REVIEW (Rule 14 1.(a)

1. At the U.S. Treasury, would the Internal Revenue Service have jurisdiction to blow away a decision from a United States District Court, a District Court of Appeals and, now, possibly, the United States Supreme Court?

2. Should property tax evasion be considered defrauding the IRS and the Tax Authorities, just like income tax evasion?

3. Does it seem reasonable that a defendant county tax assessor would fail to visit the site of the complaint of illegally encroached-upon public streets?

4. The complained-of area is wild-fire prone. Would there necessarily be many lawyers involved should we have a wind-swept fire causing property loss, injury and even death because fire and emergency vehicles could not enter the congested area because of

the illegally narrowed streets? And then, the insurance companies refuse to pay.

5. If Petitioner prevails in his accusations of RICO: Conspiracy, Mail Fraud 1989-1992, 2002, and 2007, and Extortion in 2007, and continuing violations of State Streets and Highways Codes and Property Tax Evasion since around 1975, which continues today; would past and present on-going property tax evasion alone be enough to consolidate the other past accusations to fully establish a present day RICO.?

6. Do nesting attorneys and officials fulfill the parameters of 18 USC 1962(c) by committing, and allowing a tort, which results in a neighbor having to hire an attorney to fix a problem purposely created by these other attorneys?

7. Defendant attorneys claim their private usurped portion of a public street is public property and therefore not taxable. Perhaps, but would thirty-five

year retroactive fines, damages, and penalties, be applicable in this instance?

8. All defendants and their attorneys claim the statute of limitations precludes any action and that the petition is DOA. California State Constitution Article XIII says that all private property is taxable. Why haven't the defendants, their attorneys, the district court judge and appellate judges, addressed the present day issues of State Streets and Highways Codes violations and Article XIII property tax evasion?

9. Are the Ninth Circuit District Court Judge David O. Carter, and the Appellate Judges, Fernandez, Gould, and M. Smith de-facto heads of an 18 USC 1962(c) RICO hierarchy or merely dismissive because the Ninth Circuit is awash and overwhelmed with class-action securities fraud and bankruptcy cases?

10. Does the Due Process clause allow a county police commissioner to make a ruling in a civil case?

11. Does the Equal Protection clause allow attorneys to take public property for private gain and not pay taxes on it?

12. The appellate judges conclude their affirmation of the lower court decision by stating: ("Dismissal without leave to amend is proper if it is clear that the complaint could not be saved by amendment"). Would involvement and a decision by the Internal Revenue Service be considered a proper amendment to the petition at any time?

13.. The appellate judges and the district court judge are sworn, by oath, to uphold the Constitution. Would this also include the State Constitution, wherein Amendment XIII states that all private property is taxable?

14. Is it right that a private citizen should have to pay over $85,000 in legal fees to have an encroachment removed from a public street, and the encroachment remains?

15. Is District Judge David O. Carter correct in using 18 USC 1952 and its points and authorities to dismiss the petition? 18 USC 1952 is Interstate and foreign travel or transportation in aid of racketeering enterprises.

15. Would it be moral-turpitude, or a crime, that attorney defendant James Gorman, in 2007, deliberately violated Calif. Civ.Code Proc. 337.5; the ten year S.O.L. on judgment collection?

16. Finally, does it make any sense that in order to take the dirty dishes from the dining room table to the kitchen sink, the defendant attorneys have to walk across the street?

THE LIST OF PARTIES (Rule 14.1.(b)

The list of parties is documented on the cover page.

LENGTH OF PETITION AND TABLE OF CONTENTS (Rule 14.1.(c)

The petition at 1092 words is under the limit and conforms with Rule 33 (d)

Therefore, there is no separate table of contents. Rule 14.1(c).

CITATIONS, OPINIONS & ORDERS FROM COURT (Rule 14.1.(d))

The following edited citations, opinions and orders are from the Ninth Circuit Court of Judge David O. Carter, dated November 6, 2008. Judge Carter delivered his decision single-spaced, so Petitioner in the spirit of brevity and space, keeps the same format in this instance.

I. Motion to Dismiss the Action Pursuant to Fed. R.Civ.P. 12 (b) (6),...fails tostate a claim: Fed. RCiv.P.78; Local Rule 7-15....without oral argument.

II...LEGAL STANDARD: *Bell Atlantic Corp v. Twombly*, 127 S.Ct 1955, 1969, 2007...facts consistent with those allegations....; *Balistreri v. Pacifica Police Dept.*, 901 F2d. 696, 699 (9thCir.1990)...when it lacks a "cognizable legal theory; *Bell Atlantic*, 127 S.Ct. (1968)...can prove no set of facts...;

abrogating *Coley v. Gibson*, 355 U.S. 41, 45. 46, 78 S.Ct. 99 (1957)....that would entitle it to relief. *Guerrero v. Gates*, 442F.3d. 697, 703 (9th Cir 2006). *Balisteri*, 901 F.2d at 699...Dismissal without leave to amend is appropriate; *Jackson v. Carey*, 353 F.3d 77750, 758 (90th Cir 2003) citing *Chang v. Chen* 80F. 3d 1293, 1296 (9TH Cir 1996)...the complaint could not possibly be cured by amendment.

III. DISCUSSION: "Plaintiff has not alleged a single claim upon which relief can be granted.

1. **Plaintiff's Complaint is Barred by the Statute of Limitations**. Agency *Holding Corp. v. Malley Duff & Associates, Inc.* 483 U.S. 143, 107 S.Ct. 2759, 1987...the Supreme Court held that a 4 year statute of limitations applied to all civil RICO actions, regardless of the predicate acts involved...*Beck v. Manufacturers Hanover Trust Co.*,645 F.Supp 675 (S.D.N.Y 1986)...statute of limitation period commences when Plaintiff knows of the injury which is the basis of the complaint.

Defendants encroached on his property and prevented him from developing it for commercial use...Secondly, Plaintiff asserts that the Defendants have forced Plaintiff to expend several thousands of dollars in legal fees to protect his property rights. Among these fees, Plaintiff references an amount of $25,633.65 paid to Defendant James R. Gorman in 2007. California Control of Profits of Organized Crime Act, CPC 186..which Plaintiff argues applies a 10 year statute of limitation.

2. **Plaintiff's Complaint Fails to Establish Substantive Elements of RICO** *Langford v. Rite Aid of Ala.Inc.*, 231 F.3d. 1308, 1311 (11th Cir 2000)..... establishes four elements: (1) conduct, (2) of an enterprise (3) through a pattern, (4) of racketeering activity.

a. **Plaintiff's Complaint Does Not Establish Conduct of a RICO Enterprise** *U.S. v. Fernandez*, 388 F.3d. 1199 (9th Cir 2004)...To establish an enterprise, for purposes of 18 USC 1952, Plaintiff must submit evidence of an on-going organization which exhibits a hierarchial or consensual decision making structure...; *Lester v. Percudani*, 556 F.Supp.2. 473 (M.D.P.A. 2008).... Plaintiff must demonstrate that the predicate acts were committed by the enterprise rather than by disparate and unassociated individuals....; *Reves v. Ernst & Young*, 113 S.t. 1163 (1993)...it must be

shown that the individual participated in the conduct or affairs of the enterprise and that he or she participated through a pattern of racketeering.

b. **Plaintiff's Complaint Does Not Establish a Pattern of Racketeering Activity**. *Langford, supra*, at 1311 (citing 18 U.S.C. 1961 (5))…..Plaintiff must show two predicate acts of racketeering activity, within a 10-year period of time. Because the two acts are 17 years apart, they cannot properly constitute a "pattern" for purposes of 18 U.S.C. 1961 (5). *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.* 119 F.3d. 935, 949 (11th Cir. 1997)…Plaintiff has failed to prove the elements of the alleged predicate acts.

Plaintiff's Complaint Does Not Establish Elements of Fraud. *Ziemba v. Cascade Intern. Inc.*, 256 F.3d. 1194, 1202 (11th Cir 2001)..The circumstances constituting fraud or mistake shall be stated with particularity...; General allegations of fraud are not sufficient to satisfy Fed. Rule of Civ. Proc. 9 (b); *Hirshhorn v. Mine Safety Appliances Co.*, 54 F. Supp 588 (D.C. Pa. 1944)…Plaintiff must be specific enough…to apprise the defendant of the fraudulent acts they are charged with.. Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S.Ct. 3275, 3285 (1985)…Additionally, a Plaintiff must establish the following elements, in order to satisfy FRCP 9 (B): (1) a specific false representation of material fact. (2) the time and place of each such statement and person responsible for making (or, in the case of omissions, not making) same, and (3) ignorance of its falsity by the person to whom it was made, (4) the maker's intention that it should be acted upon, and (5) detrimental reliance by Plaintiff.

Verbatim Quotations

Plaintiff alleges that Defendant James R. Gorman made a false representation to Plaintiff when

he refused to cite any tax, street, or highway authority in Plaintiff's 1990 nuisance litigation. Plaintiff alleges that Defendant James R. Gorman was aware of the falsity of his representations as Defendant Gorman is a practicing attorney who is aware of the rules of law. Plaintiff additionally alleges that Defendant Gorman's trial brief, in which Gorman applied nuisance codes rather than tax, highway, or street codes, was relied upon by Plaintiff and caused Plaintiff to lose his family, inheritance, and over $85,000 in legal fees.

Plaintiff has failed to establish the necessary elements to show fraud and satisfy FRCP 9(b). Firstly, Plaintiff has failed to show that Defendant James R. Gorman misrepresented information to him.....That Defendant chose not to rely on certain legal codes and informed Plaintiff of this fact, however, is not a misrepresentation. Defendant Gorman informed Plaintiff of his intentions and followed through with them when he wrote his trial brief relying solely on nuisance codes. Although Plaintiff disagreed with Defendant's decision, Defendant Gorman honestly disclosed his strategy to Plaintiff.

Additionally, Plaintiff has failed to show that Defendant Gorman's statement resulted in Plaintiff's detrimental reliance. On February 13, 1990, the judge presiding over Plaintiff's nuisance litigation ruled in Plaintiff's favor. The Defendant appealed, but the appeal was later dropped. It appears that Plaintiff was ultimately successful in his litigation and it is not clear, therefore, how the Defendant's use of the nuisance code harmed Plaintiff. Plaintiff has not established the connection between this use of code and his alleged loss of his family, inheritance, and $85,000 in legal fees.

ii. **Plaintiff's Complaint Does Not Establish Elements of Extortion.**

In 1992, after Plaintiff failed to pay Defendant James R. Gorman for his representation in the 1990 nuisance litigation, Defendant Gorman was awarded a no-interest judgment of $8,000 against Plaintiff. In 2007, after nearly 15 years of non-payment, Defendant Gorman sought that a lien be placed on Plaintiff's home. Plaintiff's property was seized by the Orange County Sheriff and held for auction, to satisfy this judgment. Plaintiff was told that his home would be auctioned, unless $24,287.16 was paid. Plaintiff alleges this was an act of extortion.

Section 1951 (b)(2) of Title 18 requires that the force which is applied be "wrongful." In this case, Defendant James R. Gorman had a legal right to seek payment of the judgment he was awarded in 1992. After nearly 15 years of non-payment, Defendant Gorman sought to receive the amount owed to him through Plaintiff's property. Although the Court is confused as to how an $8,000 no-interest judgment has transformed to a judgment of over $24,000, the court sees no reason to address this issue as this action is barred by the statute of limitations. Additionally, because Plaintiff has failed to establish the elements of fraud, this action would be barred regardless of the validity of Plaintiff's claim of extortion, as Plaintiff has failed to present viable claims for the two predicate acts required in RICO cases.

Plaintiff's Complaint Fails to Establish the Elements of Mail Fraud

Plaintiff has alleged additional counts of mail fraud for which it is unclear when the mailings occurred. For the remaining claims, Plaintiff has failed to establish the existence of a scheme to defraud. Plaintiff alleges that Gorman's fee statements, memorandum sent from Gorman after the judgment from Eleanor Palk, ten additional letters from Defendant Gorman, and the check for4 $23,633.65, are

all acts of mail fraud. Plaintiff has not show that these mailings were sent to deprive Plaintiff of a legal right or that these mailings included misrepresentations. Plaintiff employed Defendant James R. Gorman as his attorney in his 1990 litigation and Plaintiff failed to pay Gorman fees for his representation. Mailings stating that Plaintiff owed Defendant Gorman money, therefore, did not engage misrepresentation. Likewise, mailings which sought payment, did not attempt to deprive Plaintiff of a legal benefit.

OUTCOME

For the foregoing reasons, Defendant's motion is GRANTED.

BASIS FOR JURISDICTION Rule 14. 1.(e)(i)(ii)(iii)

1. This petition is not filed under Rule 11.

2. The original petition, Case No. SACV08-0006 DOC (RNBx), was filed September 10, 2008 and dismissed November 6, 2008.

3. The appeal, Case No. 08-57003 D.C. 8:08cv01006 DOC RNB was filed December 9, 2009. The appeal was denied March 8, 2010.

4. The petition for rehearing was filed March 25, 2010. The rehearing denial was filed May 8, 2010.

5. Rule 12.5 is unnecessary here.

STATUTORY PROVISION, Rule14.1. (e)(iv)

1. 28 USC 1254... **Certiorari.** Cases in the courts of appeals may be reviewed by the Supreme Court....(1) By writ of certiorari granted upon the petition of any party....The function of a writ of certiorari under Massachusetts law is to correct errors

of law committed by a judicial or quasi judicial tribunal where such errors are so substantial and material that, if allowed to stand, they will result in manifest injustice. M.G.L.A. c. 249 #4 *Shabazz v. Cole*, 69 F.Supp.2d 210.

2. 28 USC 2106. **Determination.** The Supreme Court... may affirm, modify, vacate, set aside or reverse any judgment or decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment

CONSTITUTIONAL PROVISIONS and STATUTES Rule 14.1.(f)

TABLE OF CITED AUTHORITIES

1. 28 USC 1331, 1341, 1343 and 1367 jurisdiction and RICO claims.

2. 28 USC 1391(a), venue.

3. Calif. Streets and Highways Codes 906, Minimum Width of County Highways.

4. 18 USC 1964, private civil remedy for a violation of 18 USC 1962.

5. California State Constitution Article XIII TAXATION. "All property is taxable and shall be assessed at the same percentage of fair market value."

6. FRCP 9, Pleading Special Matters, Fraud; it is only necessary that complaint set forth ultimate facts, which are facts upon which plaintiff asks relief, and which are sufficient to constitute his cause of action. *Hirschborn v Mine Safety Appliances Co.* (1944 D.C. Pa) 54 F.Sup 588, 61 USPQ 517.

7. 18 USC 1951 Extortion: "..under color of official right" is the wrongful taking by a public officer of money not due him or his office, whether or not the taking was accompanied by force, threats or fear. *United States v. Brown* 540 F.2d 364, 372-73 (8th Cir. 1976.).

8. Rule 9(b), notice is sufficient where specific omissions and misrepresentations are alleged and agreement is in record as exhibit and complaint. *Oliver v. Bostetter* (1977 D.C. Md.) 426 F.Supp. 1082, CCH Fed. Secur. L. Rep. 96059. Requirements of Fed. R. Civ. P. 9(b) are (1) specific false representation of material

fact, (2) knowledge of its falsity by person who made it, (3) ignorance of its falsity by person to whom it was made, (4) maker's intention that it should be acted upon, and (5) detrimental reliance by plaintiff. *Nicholas v Wyndham Int'l, Inc.* (2002, DC VI) 301 F.Supp 2d 407. 9. Cal. Civ. Code 3479: ...obstruction to the free use of property or that unlawfully obstructs the free passage or use, in the customary manner any navigable way ,or river, bay, stream, canal, or basin, or any public park, square, street, or highway. 10. California Business and Professions Codes 6068 Duties of attorney an attorney must be of the highest moral character. (a) To support the Constitution and laws of the U.S. and of this state, (c) To counsel or maintain those actions and proceedings as appear to him legal or just, (d) never seek to mislead the judge or judicial officer by an artifice or false statement of fact or law, (g) not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

11. Rule 9(b) Pleading Special Matters , Condition of the Mind

12. Section 408(n) of the IRS Code. On August 14, 1991 the United States Department of the Internal Revenue Service filed a $128,370.16 NOTICE OF LEVY against attorney Gorman, aka the Alter Ego of James R. Gorman A Professional Law Corp. Rule 9(b) that plaintiff has substantial pre-discovery evidence of these facts. *United States ex.rel. Harrison v Westinghouse Savannah River Co.* (2003, CA4 SC) 352 F3d 908.

13. Cal.Code of Civ.Proc. 1286.2, Prejudice; CCP 1283.4, Form and Content; CCP 1285.8, Grounds for Relief; CCP. 6203, (the arbitrators) failed to make a Written Determination; CCP 6050, by ignoring Subpoena Request; they completely ignored the Tax issue.

14. Demand Order to Preserve Status Quo of Property; Injunctive Relief, CPC 186(a)(1) with allegations of CPC 186, California Control of Profits of Organized Crime: CPC 186.2(6) Extortion, CPC 186.2(24) Conspiracy. The wrongful conduct of an agent. It

triggers "liability without fault"; the good faith of the principal is not a defense. *Keeton et.al. Prosser and Keaton on the law of torts 499 supra n6.*

15. California Revenue and Tax Code Chapter 7 RESPONSIBILITY OF ASSESSOR Section 1361 Escaped Property: liability on bond: the assessor and his sureties are liable on his official bond for all taxes on property which is unassessed through his willful failure or neglect.

16. California Government Code Section 11180.5 Unlawful Activities, assistance in conducting investigations that provides any agency, bureau or department of the state may assist in conducting an investigation of any unlawful activity that involves matters within or reasonably related to the jurisdiction of the agency, bureau or the department.

17, California Revenue and Taxation Codes 502, Concealing property to evade taxation; 503, Assessment of Property Escaping Assessment Through Fraudulent Act(75% penalty) and 504, 25% Additional Penalty for 503 Violation. Apparently, tax evasion by

an attorney doesn't concern Assessor Street. To state claim under RICO , a pattern of racketeering activity must be established. *Mylan Laboratories v Matkari, 7 F.3d 1130, 114 S. Ct. 1307.*

18. California Business and Professions Code 6001, the State Bar is a public corporation created by legislature as administrative arm of supreme court for purpose of assisting in matters of admission and discipline of attorney. *Emslie v State Bar of Xal. (1974) 113 Cal.Rptr. 175, 11 Cal.3d 210.*

19. The substantive standards of 1962 (d) make it unlawful for "any person to conspire" to violate 1962. In *United States v Gonzalez,, 921 F.2d 1530, 1539-40 (11th Cir. 1991)* the court found ("That the many defendants and predicate crimes were different, or even unrelated,.....[is] irrelevant, so long as it...[can] be reasonably inferred that each crime was intended to further the conspiracy. RICO is capable of providing for linkage in one proceeding of a number of otherwise distinct crimes and/or conspiracy through concept of

enterprise conspiracy. *18 USC 1962(d) U.S. v Mahoney, 71 F.3d 645, reh den, cert den,117 S.Ct. 295, 519 U.S. 927, 136 L.Ed.2d 214.* 32f.

20. Unlike an association of individuals to commit sporadic crime, RICO "enterprise" is characterized: (1) by the common purpose or goal shared by its members; (2) by continuity of personnel and ongoing existence; and (3) by an ascertainable structure, which is distinct from that inherent in pattern of racketeering. *18 USC 1961(4). U.S. v Kehoe, 310 F.3d cert den 123 S.Ct.2112, 155 L.Ed.2d 1089.*

21. Pursuant to 18 U.S.C. 371 Conspiracy, criminal conspiracy prosecutions have for many years been a frequently pursued federal felony. *(C. Darrow, The Story of My Life p64,(1932):* "If there are still any citizens interested in protecting human liberty, let them study the conspiracy law of the United States.")

22. Under 18 USC 371, three elements must be proven: (i) the agreement between two or more persons, (ii) the unlawful objects of the conspiracy, and (iii) and

least one overt act. *Periera v U.S. 347 U.S 1,11, U.S. v Kissel* 218 U.S. 601, (et.al.)

23. CPC 487b.: Conversion of Real Estate into personal property of over $400; Grand Theft Larceny.

24.. Courts often speak of 18 USC 1341 Mail Fraud as requiring but two elements: (1) a scheme or artifice to defraud and (2) use of the U.S. mails in furtherance of the scheme. In reality, a third element must also be proven, i.e. (3) that the defendant acted with specific intent to defraud. *Pelletier v Zweifel 921 F.2d 1465, 1499*

25.. The ABA Ad Hoc Civil RICO Task Force reported in 1985 that approximately 90% of the Civil RICO cases in which there has been a published judicial decision rely upon the use of mail, wire or securities fraud as predicate offenses. *ABA Task Force Report, Note 3 @ 243.* Provisions in RICO can be invoked whenever it can be alleged in good faith that two instances of mail or wire fraud have happened . *Sedima S.P.R.L. v Imrex Co. et.al.* 473 U.S. 504..

26. Pursuant to 18 USC 1968 Civil Investigative Demands, Petitioner requests a RICO Team be sent from the United States Department of Justice to investigate, and where proper, prosecute Respondents and Respondeat Superiors.

CONSISE STATEMENT OF THE CASE

Rule 14..1 (g)

1. On September 10, 2008, Appellant Robert M. Ross, a semi-retired motion picture and television film editor brought a civil 18 USC 1962 (c) RICO against the above local officials, and others, most of whom are government and private practice attorneys. At issue is the setting of litigation traps by the theft of public property for personal and private gain, specifically, a portion of public streets wherein one group of resident attorneys have taken away portions of the public streets by encroaching fences, shrubbery and curbs, crossing their legal property boundaries into the street. They're not paying any taxes on these usurped portions of the

streets they've taken. Petitioner contends the Ninth Circuit United States District Court of Judge David O. Carter and his affirming Ninth Circuit Court of Appeals judges Fernandez, Gould and M. Smith have so far departed from the accepted and usual course of judicial proceedings sanctioning this departure, they also misapply properly stated rules of law. Petitioner therefore prays for an exercise of this Court's supervisory power. Furthermore, pursuant to 18 USC 1968 Civil Investigative Demands, Petitioner requests a RICO Team be sent from the United States Department of Justice to investigate, and where proper, prosecute.

A DIRECT AND CONSISE ARGUMENT AMPLIFYING THE REASONS

Petitioner contends the California State Constitution Article XIII, **Taxation,** alone, is enough to make his case. His other cited statutes and points and authorities are secondary. Petitioner contends the defendants' points and authorities are also secondary.

Although Supreme Court does not normally grant petitions for certiorari solely to review what purports to be application of state law, it undoubtedly should do so where alternative is allowing blatant federal-court nullification of state law. *Leavitt v Jane L.*, 116 S.Ct. 2068, 518 U.S. 137, 135 L.Ed.2d 443.

CONCLUSION

Petitioner does not wish to threaten or argue, but will respectfully ask for Court's attention and some east-coast objectivity to what's happening out here in California. There's a very good chance, soon, of a big breakdown. Imperial and San Bernardino counties are on the Mexican border. The coming Cartel candidate elected: **"Throw your mortgage coupon books away. Your homes are now free and clear. Any attempt at foreclosures will be met with armed resistance."**

As a further aside, whatever happened to **FRCP Rule 1**? In an April 28, 2010 Wall Street Journal article, it was reported that of sixteen Ninth Circuit cases submitted to the Supreme Court last year, fourteen were overturned. If this is true, has this court considered the resulting erosion of trust and undermining of confidence this Ninth Circuit conduct brings?

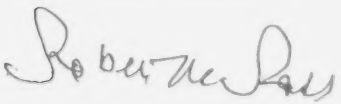
The judicial system in this state has got to change. Ninth Circuit situations like this should not, and will not be tolerated. Petitioner won't have any trouble convincing lots of people here that we have a domestic enemy rat-clawed into our judicial system. In Petitioner's city, and many other cities in common, we note in the Yellow Pages more pages for attorneys than for automobiles. And these attorneys don't include attorneys in government, corporate attorneys, or attorneys in private practice. Does Court see anything wrong with this ratio? Petitioner contends the parameters of our own Declaration of Independence taken from William of Orange in 1688 apply today too. "It is most certain and evident to all men that the public peace and happiness of any state or kingdom cannot be preserved where the law, liberties and customs established by the lawful authority in it are openly transgressed and annulled.

Petitioner respectfully requests a summary judgment and any other action that Court sees as

proper and justified. The plot thickens and the price goes up.

I declare under the penalty of perjury pursuant to the laws of the land, the foregoing is true and correct.

Respectfully submitted,



Robert M. Ross, pro-per

APPENDIX Rule 14.1.(i); (i)(ii)(iii)

Petitioner would just as soon see Court throw this appendix on the floor. There's nothing more to add; there is no transcript. Petitioner finally contends all defendants are unanimous in answer and in sync with their statute of limitations and points and authorities.

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4. Photo of Ann's Lane which is legally supposed to be 40 feet wide. Page XXXI

6. Photo of Ann's Lane entrance and Mirano's front yard. Page XXXII

7. Closer angle photo of Mirano's front yard. Please note the **machine gun** over the fence, apparently meaning nothing to the Ninth Circuit Court judges. Page XXXIII

O /JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 08-01006 DOC (RNBx)
Date: November 6, 2008

Title: ROBERT M. ROSS V. UNITED STATES OF AMERICA, ET.AL.

PRESENT: THE HONORABLE DAVID O. CARTER, JUDGE

Kristee Hopkins	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
NONE PRESENT
ATTORNEYS PRESENT FOR DEFENDANTS:
NONE PRESENT

PROCEEDING (IN CHAMBERS): GRANTING MOTION TO DISMISS ACTION PURSUANT TO FRCP RULE 12 (b)(6)

Before the Court is Defendants Philip Kohn ("Kohn"), Kenneth Frank ("Frank"), and the Orange County Bar Association (collectively "Defendants") Motion to Dismiss the Action Pursuant to FED.R.CIV.P.12 (b)(6) (the "Motion"). The Court finds the matter appropriate for decision without oral

argument. FED. R. CIV.P.78; Local Rule 7-15. After considering the moving, opposing, and relying papers, the Court hereby GRANTS Defendant's Motion.

I. BACKGROUND

Plaintiff Robert M. Ross ("Ross"), a resident of the City of Laguna Beach, alleges that the United States Government, the California State Bar Association, the Orange County Bar Association Philip Kohn, Kenneth Frank, Marilyn Mirano, Miguel Mirano, James R. Gorman, Eleanor Palk, Chriss Street, Tony Rackuackas, Chris Norby, Thomas Wilson, and Chuck Devore are engaged in a Racketeer Influenced and Corrupt Organization ("RICO") conspiracy to encroach on the property of others andgenerate litigation. Plaintiff alleges that attorneys Marilyn and Miguel Mirano, at the direction of the Laguna Beach City Attorney Kohn, and the Laguna Beach City Manager, Kenneth Frank, encroached on Plaintiff's property, causing him to spend thousands in hiring attorneys to protect his rights. Plaintiff additionally alleges that attorney James R. Gorman, along with the Orange County Superior Court Commissioner, Eleqanor Palk, extorted Plaintiff out of several thousands of dollars in "legal fees" that Plaintiff alleges he did not owe. Plaintiff alleges that the California Bar Association, the Orange County Bar Association, Chriss Street, Tony Rackauckas, Chris Norby, Thomas Wilson, and Chuck Devore have aided in this fraud by ignoring Plaintiff's letters and passively allowing the conspiracy to continue. Plaintiff further alleges that several Defendants engaged in a conspiracy to violate RICO and continue. Plaintiff further alleges that several Defendants engaged in a conspiracy to violate RICO and that Defendants James R. Gorman and the Orange County Bar Association committed mail fraud.

Plaintiff asks the court to seize the property of Defendants Marilyn and Miguel Mirano and hold them

financially responsible for the costs of readjusting property lines. Plaintiff requests that the Department of Justice launch an investigation into the above referenced actions and engage in prosecution of the Defendants. Plaintiff additionally seeks damages.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12 (b) (6), a complaint must be dismissed when a plaintiff's allegation fails to state a claim upon which relief can be granted. Once it has adequately stated a claim, a plaintiff may support the allegations in its complaint with any set of facts consistent with those allegations. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1969 (2007); see *Balistreri v. Pacifica Police Dept*, 901 F.2d 696, 699 (9th Cir. 1990) (stating that a complaint should be dismissed only when it lacks a "cognizable legal theory" or sufficient facts to support a cognizable legal theory). Dismissal for failure to state a claim does not require the appearance, beyond a doubt, that Plaintiff can prove "no set of facts" in support of its claim that would entitle it to relief. *Bell Atlantic*, 127 S.Ct. at 1968 (abrogating *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957))

The Court must accept as true all factual allegations in the complaint and must draw all reasonable inferences from those allegations, construing the complaint in the light most favorable to Plaintiff. *Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2006); *Balistreri*, 901 F.2d at 699. Dismissal without leave to amend is appropriate only when Court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 1122, 1127 (9th Cir. 2000).

III. DISCUSSION

Plaintiff has presented four claims: A RICO violation, Conspiracy to Commit a Violation of RICO, Aiding and Abetting a RICO violation, and Mail Fraud. As outlined below, Plaintiff has not alleged a single claim upon which relief can be granted.

A. Civil Racketeer Influenced and Corrupt Organization (RICO)

1. Plaintiff's Complaint is Barred by the Statute of Limitations.

In *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 142, 107 S.Ct. 2759, 2767 (1987), the Supreme Court held that a 4 year statute of limitations applied to all civil RICO actions, regardless of the predicate acts involved. Courts have further held that the statute of limitations period commences when Plaintiff knows, or has reason to know of the injury which is the basis for the action. *Beck v. Manufacturers Hanover Trust Co.*, 645 F. Supp. 675 (S.D.N.Y. 1986).

In this case, the four-year statute of limitations has run and Plaintiff is time-barred from bringing this action. Plaintiff's alleged injuries are two-fold. Plaintiff alleges, firstly, that the Defendants encroached on his property and prevented him from developing it for commercial use. Secondly, Plaintiff asserts that the Defendants have forced Plaintiff to expend several thousands of dollars in legal fees to protect his property rights. Among those fees, Plaintiff references an amount of $25,633.65 paid to Defendant James R. Gorman in 2007.

Damages for both of Plaintiff's claims have been reasonably ascertainable by Plaintiff for more than four years. Plaintiff alleges that the Defendants Miguel and Marilyn Mirano began a campaign of encroaching on

public property and property owned by Plaintiff as far back as the mid 1970's. Plaintiff was aware of the potential damage these encroachments could cause when, in 1986, he hired attorney William Stocker to represent him in a nuisance and trespass claim.

The legal fees which Plaintiff references are the result of this continuing litigation. In 1989, the attorney Stocker abandoned Plaintiff's case. Defendant James R. Gorman was hired to pursue Plaintiff's claim. In 1990, the court ruled in favor of Plaintiff, but denied Plaintiff legal fees of $30,650.00. Plaintiff consequently failed to pay Defendant Gorman and Defendant Gorman initiated a suit against Plaintiff. In 1991 this dispute was submitted to arbitration before the Defendant Orange County Bar Association. In 1992, the arbitration panel issued a judgment against Plaintiff for $8,000, which Plaintiff again choose (sic) not to pay.

In 2007, after nearly 15 years of non-payment, Defendants Gorman and the Orange County Superior Court Commissioner, Eleanor Palk, imposed a lien on Plaintiff's home to secure $24,287.16 in satisfaction of Plaintiff's debt. Plaintiff has not alleged any further activity by either himself or the Defendants, between 1992 and 2007.

Plaintiff was aware, in 1992, that a judgment was entered against him. Plaintiff's choice to avoid payment, which resulted in the collection of the debt in 2007, can not properly be viewed as extending the statute of limitations as Plaintiff was aware, for over 15 years, that payment was and the alleged damage to Plaintiff's property occurred as far back as the 1970's.

Plaintiff has suggested that the court supplant current law, regarding RICO statute of limitation, with the California Control of Profits of Organized Crime Act, CPC 186, which Plaintiff argues applies a 10 year statute of limitation. Even if the court could accept

Plaintiff's suggestion to switch laws, Plaintiff was aware of the damages caused to him for more than 10 years and would still properly be time-barred from bringing this suit.

2. Plaintiff's Complaint Fails to Establish Substantive Elements of RICO

In addition to being barred by the statute of limitations, Plaintiff has failed to demonstrate the substantive elements of a RICO claim. In order to establish liability under a civil RICO claim, Plaintiff is required to establish four elements: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity. *Langford v. Rite Aid of Ala., Inc.*, 231 F.3d 1308, 1311 (11th Cir. 2000).

a. Plaintiff's Complaint Does Not Establish Conduct of a RICO Enterprise

To establish an enterprise, for purposes of 18 U.S.C. 1952, Plaintiff must submit evidence of an ongoing organization which exhibits a hierarchical or consensual decision-making structure and in which various associates function as a continuing unit. *U.S. v. Fernandez*, 388 F.3d 1199 (9th Cir. 2004). Additionally, Plaintiff must demonstrate that the predicate acts were committed by the enterprise, rather than by disparate and unassociated individuals. *Lester v. Percudani*, 556 F.Supp. 2d, 473 (M.D.P.A. 2008). To hold an individual liable, it must be shown that the individual participated in the conduct or affairs of the enterprise and that he or she participated through a pattern of racketeering. *Reves v. Ernst & Young*, 113 S.Ct. 1163 (1993).

Plaintiff alleges that the RICO enterprise is the California State Bar Association. Plaintiff alleges, properly, that the California State Bar Association is an organization with a hierarchical structure and members

that function as a continuing unit. Plaintiff has failed to establish, however, that the alleged predicate acts were conducted by the California State Bar Association. The predicate acts alleged of in the complaint were conducted, almost exclusively, by Defendant James R. Gorman. Although Defendant Gorman is a member of the California State Bar Association, this membership alone is not sufficient to establish the existence of a RICO enterprise. Plaintiff has not shown that Defendant Gorman participated in the conduct or affairs of the California State Bar Association or that he did so through a pattern of racketeering activity. The predicate acts alleged in the complaint appear to be actions undertaken independently, by Defendant Gorman, for the Defendant Gorman's exclusive benefit.

b. Plaintiff's complaint Does Not Establish a Pattern of Racketeering Activity

Plaintiff, additionally, has not demonstrated a "pattern" for the purposes of RICO. In order to establish a "pattern of racketeering activity", Plaintiff must show two predicate acts of racketeering activity, within a 10-year period of time. *Langford, supra*, at 1311 (citing 18 U.S.C. 1961(5)).

Plaintiff has alleged an act of fraud and an act of extortion as the predicates for his RICO claim. Plaintiff has failed to establish a "pattern" of racketeering activity because the two predicate acts alleged occurred more than 10 years apart. Plaintiff alleges, as the first predicate act, that Defendant James R. Gorman engaged in fraud during his 1990 representation of Plaintiff. Plaintiff secondly alleges that Defendant James R. Gorman engaged in extortion in 2007. Because these two acts are 17 years apart, they can not properly constitute a "pattern" for purposes of 18 U.S.C. 1961(5).

Additionally 18 U.S.C. 1961(5) requires a Plaintiff, in order to survive a motion to dismiss, to "allege facts sufficient to support each of the statutory elements for at least two of the pleaded predicates acts."

i. Plaintiff's complaint Does Not Establish Elements of Fraud

A complaint that states a claim of fraud must satisfy Federal Rule of Civil Procedure 9(b), which states that "the circumstances constituting fraud or mistake shall be stated with particularity." *Ziemba v. Cascade Intern., Inc.*, 256 F.3d 1194, 1202 (11th Cir.2001). General allegations of fraud are not sufficient to satisfy Federal Rule of Civil Procedure 9(b). Rather, Plaintiff must be specific enough in their(sic) allegations to apprise the defendant of the fraudulent acts they are charged with. *Hirshhorn v. Mine Safety Appliances Co.*, 54 F.Supp. 588 (D.C. Pa. 1944). An allegation of Fraud satisfies Federal Rule of Civil Procedure 9(b) when it establishes:

(1) precisely what statements were made in what documents or oral representations or what omissions were made;

(2) the time and place of each such statement and person responsible for making (or, in the case of omissions, not making) same, and

(3) ignorance of its falsity by the person to whom it was made,

(4) the maker's intention that it should be acted upon, and

(5) detrimental reliance by Plaintiff.

Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1421)3d Cir. 1997).

Plaintiff alleges that Defendant James R. Gorman made a false representation to Plaintiff when he refused to cite any tax, street, or highway authority in Plaintiff's 1990 nuisance litigation. Plaintiff alleges that Defendant James R. Gorman was aware of the falsity of his representation as Defendant Gorman is a practicing attorney who is aware of the rules of law. Plaintiff states that he relied on Defendant's representation, because he trusted his attorney to apply the law. Plaintiff additionally alleges that Defendant Gorman's trial brief, in which Gorman applied nuisance codes rather than tax, highway, or street codes, was relied on by Plaintiff and caused Plaintiff to lose his family, inheritance, and over $85.000.

Plaintiff has failed to establish the necessary elements to show fraud and satisfy Federal Rules of Civil Procedure 9(b). Firstly, Plaintiff has failed to show that Defendant James R. Gorman misrepresented information to him. Plaintiff alleges that the Defendant's misrepresentation was his refusal to apply tax or highway codes in Plaintiff's 1990 nuisance litigation. The Defendant chose not to rely on certain legal codes and informed Plaintiff of this fact, however, is not a misrepresentation. Defendant Gorman informed Plaintiff of his intentions and followed through with them when he wrote his trial brief relying solely on nuisance codes. Although Plaintiff disagreed with Defendant's decision, Defendant Gorman honestly disclosed his strategy to Plaintiff.

Additionally, Plaintiff has failed to show that Defendant Gorman's statement resulted in Plaintiff's detrimental reliance. On February 13, 1990, the judge presiding over Plaintiff's nuisance litigation ruled in Plaintiff's favor. The Defendant's appealed, but this appeal was later dropped. It appears that Plaintiff was

ultimately successful in his litigation and it is not clear, therefore, how the Defendant's use of the nuisance code harmed Plaintiff. Plaintiff has not established the connection between the use of this code and his alleged loss of family, inheritance, and $85.000.

ii. Plaintiff's Complaint Does Not Establish Elements of Extortion

Plaintiff's claim of extortion also fails to establish all necessary elements. Extortion is defined as "the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. 1951(b)(2).

In 1992, after Plaintiff failed to pay Defendant James R. Gorman for his representation in the 1990 nuisance litigation, Defendant Gorman was awarded a no-interest judgment for $8,000 against Plaintiff. In 2007, after nearly 15 years of non-payment, Defendant Gorman sought that a lien be placed on Plaintiff's home. Plaintiff's property was then seized by the Orange County Sheriff and held for auction, to satisfy this judgment. Plaintiff was told that his home would be auctioned, unless $24,287.16 was paid. Plaintiff alleges that this was an act of extortion.

Section 1951(b)(2) of Title 18 requires that the force which is applied be "wrongful." In this case Defendant James R. Gorman had a legal right to seek payment of the judgment he was awarded in 1992. After nearly 15 years of non-payment, Defendant Gorman sought to receive the amount owed to him through Plaintiff's property. Although the court is confused as to how an $8,000 no-interest judgment has transformed to a judgment of over $24,000, the court sees no reason to address this issue as this action is barred by the statute of limitations. Additionally,

because Plaintiff has failed to establish the elements of fraud, this action would be barred regardless of the validity of Plaintiff's claim of extortion, as Plaintiff has failed to present viable claims for the two predicate acts required in RICO cases.

B. Plaintiff's Complaint Does Not Establish that Defendants Aided and Abetted in a RICO violation.

Plaintiff alleges that several Defendants have aided and abetted in the alleged RICO violation. To be held liable for aiding and abetting in an offense, it must be shown that (1) the (sic) substantive crime has been committed, and (2) that the individual charged with aiding and abetting knew of the substantive offense and acted in order to facilitate it. *U.S. v. Soto*, 539 F.3d Cir. 2008). Because Plaintiff has failed to establish that the substantive RICO offense was committed, the claims of conspir4acy to violate RICO must fail.

C. Plaintiff's Complaint Does Not Establish a Conspiracy to Commit RICO

A claim of conspiracy to violate Racketeer Influenced and Corrupt Organization act must fail if the substantive claims themselves are deficient. *Discon, Inc. v NYNEX Corp.*, 93 F.3d 1055 (2d Circ. 1996). Because Plaintiff's substantive claim of a RICO violation is deficient, the claim of conspiracy to violate RICO fails.

D. Mail Fraud

1. Plaintiff's Complaint is Barred by the Statute of Limitations

The statute of limitations for mail fraud is a period of five years from the date of the alleged mailing. 18 U.S.C. 3282(a) (2008); *United States v Berger*, 22 F.Supp. 2d 145, 153 (S.D.N.Y. 1998).

Plaintiff alleges several instances of mail fraud for which the statute of limitations has expired.

Petitioner alleges that six fraudulent memoranda were sent through the U.S. Mail, from Defendant Gorman to his opposing counsel G. Rick Mueller, in Plaintiff's 1990 suit for nuisance. The litigation discussed in the memoranda concluded over 18 years ago. Plaintiff additionally alleges that Defendant Gorman's lawsuit against Petitioner, in 1991, resulted in a fraudulent use of the mails. As the mailings regarding these cases necessarily occurred over 17 years ago, these mailings are clearly outside the five year statute of limitation.

Plaintiff additionally alleges that the Orange County Bar Association engaged in mail fraud in sending out five memoranda regarding the 1992 arbitration judgment. As these mailings occurred over 16 years ago, the claims of mail fraud involving these mailings are likewise barred by the statute of limitations.

2. Plaintiff's Complaint Fails to Establish the Elements of Mail Fraud

The elements necessary to establish the offense of mail fraud are (1) the existence of a scheme or artifice to defraud or obtain money or property by false pretenses, representations or promises, and (2) use of the United States mails for the purpose of executing a scheme. *Hall v. Witteman*, 569 F.Supp. 2d 1208 (D. Kan. 2008). After holding that the elements of a "scheme to defraud" are identical under the wire fraud and mail fraud statutes, the D.C. Circuit in *U.S. v. Lemire*, 720 F.2d 1327, 1335 (D.C. Circ. 1983) stated: The crux of these requirements is that the wire fraud statute makes criminal only breaches of duty that are accompanied by a misrepresentation or non disclosure that is intended or is contemplated to

deprive the person to whom the duty is owed of some legally significant benefit." *Id.* at 1335, 108.

Plaintiff has alleged additional counts of mail fraud, for which it is unclear when the mailings occurred. For these remaining claims, Plaintiff has failed to establish the existence of a scheme to defraud. Plaintiff alleges that Gorman's fee statements, memorandum sent from Gorman after the judgment from Eleanor Palk, ten additional letters from Defendant Gorman, and the check for $25,633.65, are all acts of mail fraud. Plaintiff has not shown that these mailings were sent to deprive Plaintiff of a legal right or that these mailings included misrepresentations. Plaintiff employed Defendant James R. Gorman as his attorney in his 1990 litigation and Plaintiff failed to pay Gorman attorney fees for this representation, Mailings stating that Plaintiff owed Defendant Gorman money, therefore, did not engage in misrepresentation. Likewise, mailings which sought payment, did not attempt to deprive Plaintiff of a legal benefit.

IV. OUTCOME

For the foregoing reasons, Defendant's motion is GRANTED. The Clerk shall serve this minute order on all parties to the action.

FILED

MAR 08 2010

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT M. ROSS,

No. 08-57003

Plaintiff-Appellant

D.C. No. 8:08-cv-01006

DOC-RNB

v.

ORANGE COUNTY BAR ASSOCIATION; et.al.,

MEMORANDUM*

Defendants-Appellees,

and

UNITED STATES OF AMERICA; et.al,

Defendants

Appeal from the United States District Court
For the Central District of California
David O. Carter, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and SMITH,
Circuit Judges.

This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.*

The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).**

Robert M. Ross appeals pro se from the district court's order dismissing his action brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). We have jurisdiction under 28 U.S.C. 1291. We review de novo, Cholla Ready Mix, Inc. v. Civish, 382 F.3d 969, 973 (9th Cir. 2004), and we affirm.

The district court properly concluded that Ross' claims agains defendants Orange County Bar Association, Phillip Kohn, and Kenneth Frank are time-barred because Ross' claims accrued in 1992 and he filed this action in 2008. See Pincay v. Andrews, 238 F.3d 1106, 1108 (9th Cir. 2001) (stating that the statute of limitations for civil RICO claims is four years). Further, Ross had no separate private right of action for mail fraud under 18 U.S.C. 1341 Before: FERNANDEZ, GOULD, and SMITH, Circuit Judges.

FILED

APR 26 2010

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT M. ROSS,

No. 08-57003

Plaintiff-Appellant

D.C. No. 8:08-cv-01006
DOC-RNB

v.

Central District of
California, Santa Ana

ORANGE COUNTY BAR ASSOCIATION; et.al.,

ORDER

and

UNITED STATES OF AMERICA; et.al,

Defendants

Before: FERNANDEZ, GOULD, and SMITH, Circuit Judges.

The panel has voted to today to deny the petition for panel rehearing.

The full court has been advised of the petition for hearing en banc and no judge has

requested a vote on whether to rehear the matter en banc. See Fed. R. App. P.35.

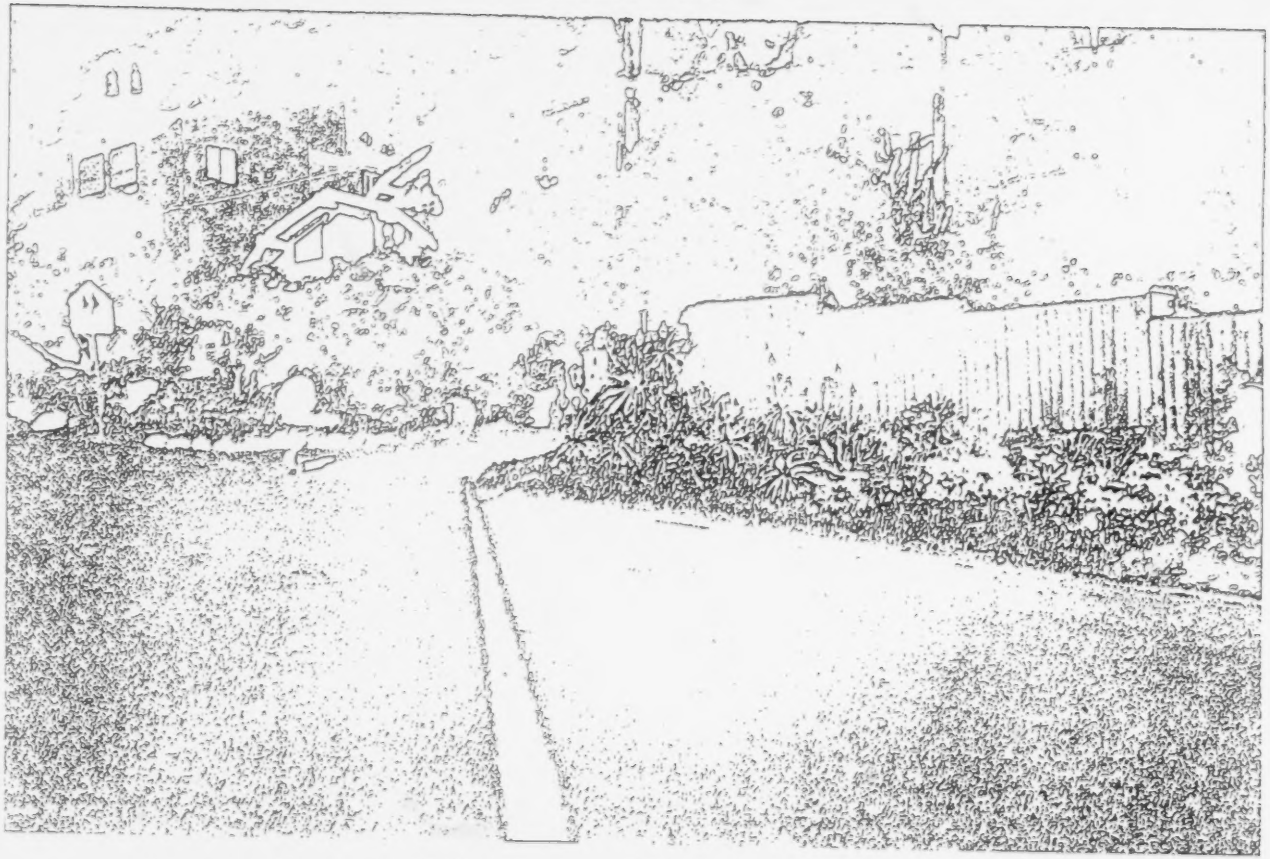
Robert M. Ross' petition for panel rehearing and petition for rehearing en banc are denied.

No further filing shall be accepted in this closed cases.

USCA9 · 08-57003 Exhibit 7.2

ANN'S LANE

Exhibit 7.3



Ann's Lane @ Alta Laguna Blvd.

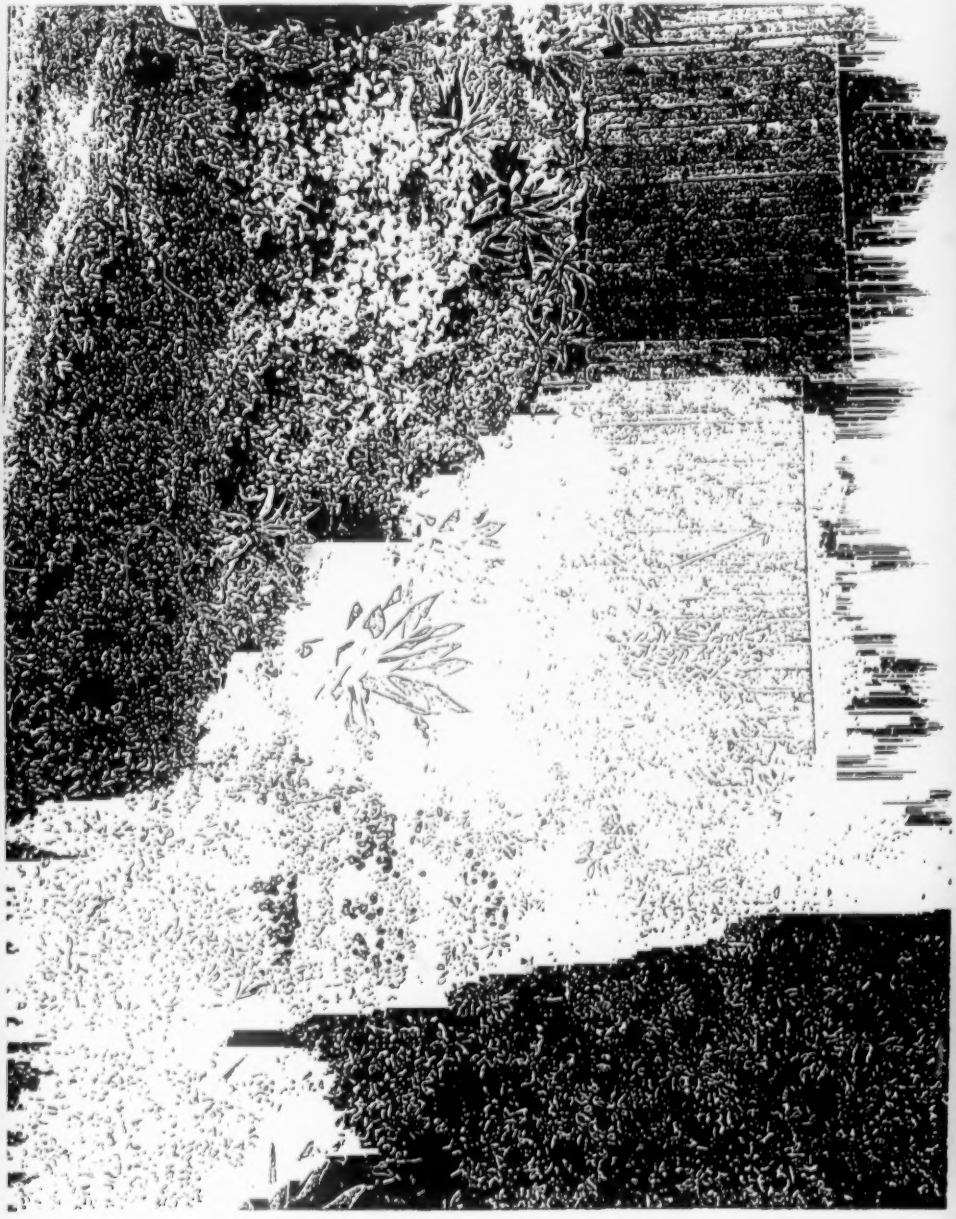


Exhibit 7.1